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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JAMES A. JOHANSON, JOSEPH M. CANNON, and
PHILIP D. MOONEY

Appeal 2011-008726
Application 09/777,884
Technology Center 2400

Before JOSEPH L. DIXON, STEPHEN C. SIU, and
DEBRA K. STEPHENS, *Administrative Patent Judges*.

DIXON, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

A Patent Examiner rejected claims 3, 5, 19, 30-35, and 37. The Appellants appeal therefrom under 35 U.S.C. § 134(a). We have jurisdiction under 35 U.S.C. § 6(b). Claims 1, 2, 4, 6-18, and 36 have been canceled. This appeal is related to prior appeal 2009-000929, decided August 24, 2009.

We affirm.

A. INVENTION

The invention at issue on appeal relates to a method and apparatus for allowing a user to select an electronic device to communicate with based on the location of the electronic device. (Spec. 1).

B. ILLUSTRATIVE CLAIM

Claim 19, which further illustrates the invention, follows.

> 19. A method for selecting a nearby device, from among a plurality of nearby devices that are not grouped, to communicate with, comprising the steps of:
>
> transmitting a Bluetooth signal;
>
> detecting a plurality of Bluetooth signals from the nearby devices that are not grouped, each signal containing GPS coordinates of at least one nearby device and a device type of the at least one nearby device; and
>
> selecting one of the nearby devices that are not grouped associated with one of the detected signals to communicate with based on the received GPS coordinates.

C. REFERENCES

The Examiner relies on the following references as evidence:

Tognazzini	5,907,293	May 25, 1999
Fumarolo	US 6,204,844 B1	Mar. 20, 2001
Bork	US 6,246,376 B1	Jun. 12, 2001

D. REJECTIONS

Claims 19 and 32 stand rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement.

Claims 3, 5, 19, 30-35, and 37 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Fumarolo in view of Bork in further view Tognazzini.

ANALYSIS

35 U.S.C. §112

With respect to independent claims 19 and 32, we have reviewed Appellants' contentions in the Appeal Brief and the Reply Brief (App. Br. 3-7 ; Reply Br. 1-2), but Appellants have not shown error in the Examiner's showing of a lack of written description support for the claim limitation "nearby devices that are not grouped." Appellants provide argument with reference to MPEP section 2173.05 (i) (App. Br. 3-4) which relates to 35 U.S.C. §112, second paragraph, but the Examiner rejected the claims under 35 U.S.C. §112, first paragraph. Therefore, Appellants' argument, regarding 2173.05(i) Negative Limitations, does not show error in the Examiner showing of a lack of written description support for the claimed subject matter.

Appellants further contend that there is written description support for the claim language "devices that are not grouped" because:

> if an individual device is too far from a user, then it will not be displayed because the user has the option of setting the maximum distance that a device can be from the user and still be displayed. In contrast, if the device were part of a group then the specification would necessarily have to address whether the entire group cannot be displayed if an individual device within the group is too far from a user. The fact that the specification does not address such a scenario is an indication that the nearby devices are not grouped.

(App. Br. 5). We find Appellants' rationale unpersuasive of error in the Examiner's showing of a lack of written description support.

The Examiner maintains that Appellants' Specification provides no clear description of what devices cannot or must not be grouped prior to selection of a nearby device. (Ans. 9). The Examiner further maintains that Appellants' Specification identifies that devices may be "grouped based on proximity prior to selecting a device. Citing page 6, line 11 to page 7, line 3." The Examiner maintains that Appellants' Specification requires grouping devices by proximity (i.e., with in a certain range). (Ans. 9). We find the Examiner's line of reasoning to be reasonable and thus sustain the rejection of claims 19 and 32.

35 U.S.C. §103

At the outset, we note that Appellants have elected to group independent claims 19 and 32 as standing or falling together along with dependent claims 3, 5, 30, 31, 33-35, and 37. We select independent claim 19 as the representative claim and will address Appellants' arguments thereto.

We find the Examiner's responsive arguments at pages 10-12 of the Answer to be persuasive and adopt those reasonings as our own.

We find that the combined teachings of the three references would have suggested the claimed "detecting a plurality of Bluetooth signals from the nearby devices that are not grouped." Depending on the specific (remote) location of the (communication) device transmitting a Bluetooth signal, there may be a limited number of other Bluetooth devices in the receiving vicinity. Additionally, these limited number of Bluetooth devices

may occasionally be from disparate individual users with no association to any of the other users. In this situation, there would be no "groups" since each individual device would come from separate unassociated users (groups of one (1)) which are not capable of being grouped. Therefore, in this limited situation, it is clear that the references teach the claimed "nearby devices that are not grouped."

Additionally, Appellants argue that the Tognazzini reference does not disclose a signal comprising a "device type." (App. Br. 9; Reply Br. 3). Appellants proffer that the phrase "device type" should be interpreted to mean "a type of *communication* device (see paragraph [0019] [of the published application], lines 3 and 4… In contrast, the type of device disclosed by Tognazzini appears to be a vehicle (i.e., a car)." Appellants further argue that "the Examiner's position strains credulity" (App. Br. 9; Reply Br. 3). We disagree with Appellants' contention and find that Appellants' Specification further states that "[a]fter the device is selected, communication software that is either incorporated into the present invention or is operated independently can communicate between the users device and the desired device." (Spec. 2, ll.18-21). Therefore, the device would not properly be called a "communication" device. Accordingly, Appellants' argument is not persuasive of error in the Examiner's showing of obviousness. We further note that Appellants' Specification discusses the use of the invention "[i]n accordance with an exemplary embodiment of the present invention, electronic devices such as, for example, computers, laptops, cellular telephones, televisions, VCRs, stereos, pagers, etc." Therefore, it would be more appropriate to amend the "device type" as a "type of electronic device." (Spec. 2, ll. 9-13). Since Appellants have not

identified a specific definition for "device type" and from our review of Appellants' Specification, we find only exemplary discussion, we find the Examiner's claim interpretation and line of reasoning in the rejection to be reasonable and persuasive.

We additionally find Appellants' argument regarding a distinction with respect to the Tognazzini reference and the Fumarolo reference concerning "vehicles" rather than "communication devices" to be unpersuasive. We find that the vehicle does not perform the communication and location determination functions, but an electronic unit housed in the vehicle provides those functions. Just as identified in Appellants' Specification "computers, laptops, cellular telephones, televisions, VCRs, stereos, pagers, etc. are provided with, or may already have, transceivers." (Spec. 2). Appellants further disclose that "[o]ther electronic devices 20, such as, for example, computers, laptops, printers, scanners, cellular telephones, PDAs, *automobiles*, pagers, etc., likewise have transceivers 22." (Spec. 5, ll. 6-8; emphasis added). Since Appellants disclose that the electronic device may be embodied in an automobile/vehicle, we find Appellants' proffered distinction to be unpersuasive of error in the Examiner's showing of obviousness.

Furthermore, we find the "device type" to be non-functional descriptive material, since it is not used in the method of independent claim 19 in any manner. Therefore, we find the Examiner's reliance upon the disclosed "make/model (i.e., type) of the vehicle" (Ans. 12) teaches a device type.

With respect to Appellants' argument concerning the combination of the teachings of the three references (App. Br. 9-11), we find Appellants' argument concerning distance and change of principle of operation to be unpersuasive since they do not consider the combined teachings of the references as set forth by the Examiner in the rejection and the responsive arguments. (Ans. 5, 7, and 12). Therefore, Appellants have not shown error in the Examiner's showing of obviousness of independent claim 19 and claims 3, 5, 30, 31, 33-35, and 37 are grouped therewith.

CONCLUSION

For the aforementioned reasons, Appellants have not shown that the Examiner erred in rejecting independent claims 19 and 32 under 35 U.S.C. §112 based upon a lack of written description support for the claimed subject matter; and Appellants have not shown that the Examiner erred in rejecting independent claim 19 under 35 U.S.C. §103.

ORDER

We affirm the rejection of claims 19 and 32 under 35 U.S.C. §112; and we affirm the obviousness rejections of claims 3, 5, 19, 30, 31, 33-35, and 37.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 41.50(f).

AFFIRMED

pgc